

was given by Salmon to Thomas Clagett, so it was given in the manner described in the deed. The proofs clearly establish the fact, that the liability from Thomas Clagett to Salmon was incurred in the mode specified by the deed; therefore, I am of opinion, that there is no foundation for this objection. *Lanusse v. Barker*, 3 Wheat. 148; *Mason v. Pritchard*, 12 East, 227.

It has also been insisted, that the credit has been extended, and the time of payment enlarged, by the agreement of the 26th of May, 1828. Whether that can be so considered must depend upon what shall be deemed the true meaning of the mortgage.

I take the sense of that contract to be, that Salmon, upon the faith of the property so pledged to him, agreed to lend his credit to Thomas Clagett during a certain time, and to a specified amount. The sole object of that deed was to obtain for Thomas Clagett such a credit; but if the mortgage might have been foreclosed, at any time, to enforce payment for any parcel of goods sold; and of every sum of money lent by Salmon to Thomas Clagett, as it became * due, the very object of the deed might have been defeated. He would not have obtained such a credit, as **176** could have been used by him, as a capital with which to prosecute his business. The mortgaged property might have been sold, or the sureties be forced, at once, to pay, when by postponing the payment, under the assurance of the guaranty, until the 1st of October, 1830, Thomas Clagett's business, even if he should fail, might be so wound up as to produce no embarrassment, nor result in loss to any one. For, in general, where a party undertakes to do any act within, or upon the expiration of a limited time, he cannot be sued and charged with a breach of his agreement before the lapse of the specified time; unless he has himself previously rendered the performance of his contract absolutely impossible. *Sir Anthony Main's Case*, 5 Co. 21. The limitation of the amount of the credit to \$10,000, also shews it to have been the true meaning of the parties, that Salmon, on his part, undertook and agreed to give credit to Thomas Clagett to that amount, in the manner described, until the 1st of October, 1830.

Much stress has been laid upon the fact, that the notes given by Thomas Clagett and some others of the grantors, fell due long before the 1st of October, 1830, and that Salmon being then unable to pay, he must then be considered as entitled to indemnity by a foreclosure of the mortgage. But that very circumstance shews, that it could not have been their intention to subject them properly to a foreclosure of their mortgage immediately that those notes fell due; because the express object, in so pledging their property, was to sustain Thomas Clagett's credit to a period far beyond that time. I am, therefore, of opinion, that the mortgage could not have been foreclosed before the 1st of October, 1830; and consequently, the stipulation in the agreement, that it should